

Order

Michigan Supreme Court
Lansing, Michigan

March 31, 2006

Clifford W. Taylor,
Chief Justice

129787

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

DARLENE FRAIM,
Plaintiff-Appellee,

v

SC: 129787
COA: 253073
Genesee CC: 02-074645-NO

CITY SEWER OF FLINT a/k/a CITY SEWER
CLEANERS OF MID-MICHIGAN, INC.,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 22, 2005 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we AFFIRM in part and REVERSE in part the judgment of the Court of Appeals. We affirm the Court of Appeals ruling that the trial court correctly denied defendant's motion for summary disposition. However, we conclude that no material question of fact exists on the applicability of the open and obvious doctrine. The open and obvious doctrine is inapplicable to this case, because defendant did not possess or control the premises within which plaintiff was injured. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516 (2001). We REMAND this case to the Genesee Circuit Court for further proceedings not inconsistent with this order.

We do not retain jurisdiction.



s0328

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 31, 2006

Corbin R. Davis

Clerk